G. R. S. 59] GPB—15,000—20-12-13

GENERAL AND REVENUE SECRETARIAT.

1901-02.
(Police.)

File No. 66

Serial Nos. 1—4.

Papers Filed.

Month September 1902

SUBJECT.

An irregular Procedure of arrest made by the Head Constable of the Madras Police, in the Mysore Territory.—

D. Spurrier

PREVIOUS REFERENCES.	LATER REFERENCES.
	Cr. 1 mail.

SECTION Pol

FILE No. 16 0/01 02

SERIAL No.

Note

Subject.

Arrest by a Madras Head Constable of a Proclaimed offender named Abdul Rahim of Vaniambadi, at Sagar in Mysore Dist. without a warrant and without the intervention of the local authorities

Last Reference.

Letter No. 883/38 dated 2nd April 1902, from the Dt. Magistrate, Shimoga.

The Dt. Magistrate reports that one Abdul Rahim of Vaniambadi (a native Indian Subject of His Majesty) who was trading in Sagar under the assumed name of Anandapeer Ahmed Hussain Sahib, was arrested by the Head Constable

Constable of the Intelligence Branch of the Madras Police on 23rd January 1912 at Sagar and produced before the Assistant and 2nd class Magistrate of Sagar. He further states that the Constable made the arrest himself and was not armed with a warrant from a British Magistrate, and that he brought letters from the Commr of Police and the Chief Inspector of the Madras City Police from which it was made out that the said Abdul Rahim was a proclaimed offender in a Criminal case on the file of the Chief Presidency Magistrate, Madras, on charges under Sections 419 420, 467 and 468/471 of the Indian Penal Code

It is further stated that the Head Constable requested the Taluk Magistrate to remand the arrested person to the Lock-up pending the receipt of a formal warrant from Madras, but that the Magistrate doubting the legality of the arrest released the man on bail and recognizance bond and reported the matter to the Sub Dy Magistrate. The Sub Division ~~Officer~~ Magistrate forwarded the papers to the Dt Magistrate and stated that the arrest made by the Head Constable was irregular and ~~illegal~~ illegal as the said Constable was not armed with a warrant as required by Chief Commissioner's Notification No

Co 111 dated 27th July 1878, and also that the arrest should have been made with the knowledge & thro' the intervention of the local Police as laid down in Madras Police order No 157 published in Govt Proc: No 6226-35 / J.668 dated 18th November 1898. x & L No 8 in part &

The questions for consideration are (1) whether the arrest of the accused by the Head Constable without a warrant was legal and (2) whether the arrest should have been made with the knowledge and help of the Mysore Police.

As regards the 1st point the Dt Magistrate is of opinion that the act of the Head Constable was legal for section 57, clause (3) of the Criminal

Procedure Code authorizes a Police officer to arrest a proclaimed Offender. Section 58 of the Criminal Procedure Code as it is in force in British India read with Sec. 8 of the Extradition and Foreign Jurisdiction Act empowers the British Police to pursue an Offender whom they are authorized to arrest into any place outside British India in the case of all Native Indian Subjects of His Majesty. The Dy Magr observes that the Bhiwandi Collector's Notification No. 111 dated 23rd July 1878 relied on by the Sub Dn Magr applies only in the case of persons who are subjects of the Mysore State. This opinion seems

× Sl No 1 in Part K

seem to be correct.

As regards the 2nd point, the Dt. Magistrate [illegible] Stabp. that though there is no Govt. order to the effect that all arrests in Mysore, by the British Police Shd be made with the knowledge and help of the Mysore Police, the practice hitherto has been to make all such arrests with the knowledge and help of the Mysore Police. He observes that the Madras Police ords as well as the Chief Commissioner's Notification above quoted seem to require such a procedure, & that this practice which has prevailed from a long time, seems to

to be convenient in
every way as it keeps
the local magistracy
and Police informed
of all that takes place
in their jurisdiction.
He requests that if
the Govt is also of
the same view, the
Hon'ble the Resident
may be moved to
cause necessary
instructions to be
issued to the British
Police.

Submitted for orders

It is doubtful whether
Notification No 111 of 23rd July
1878 is capable of the
construction put
upon it by the Dt Magistrate
It seems to apply to
all persons whether
subjects of His Majesty
who have taken refuge in
the Native State
subjects of the Native State
against whom warrants
have been issued by the
British Magistrates. The
question however is whether in

Ans 1 in
Part K

the case of proclaimed offenders, who are found outside British India they can be arrested without a warrant by Police Officers from British India. The Dt. Magistrate seems to be right in considering that S. 87 the Explanation read taken with Ss 54 & 58 Cr. P.C. authorizes such a procedure. A representation may however be made to the Residency that as far as possible such arrests should be made with the knowledge of the local Police

Submitted for orders

Puri
11/4/02

Subd to Secy
11/4/02

S. 8 of the Extn Act & the provns of the Cr. Pr. Code may give authority to the British Officials concerned when their acts are questioned within the jurisdiction of these Courts. But they can have by their own force no validity

whatever in Mysore
Offici- note continued

References required are ~~upt~~ up. The Extradition Act XXI of 1879 does not extend to Mysore. It simply lays down the conditions under which and the manner in which, the surrender of prisoners who have committed offences outside British India, is to be made to the proper foreign authorities. The Act applies in the absence of any law or treaty with regard to extradition. See s.1 of the Act. As there is no treaty separately with the Mysore Government, extradition is regulated by the Act. The rules for the issue of warrants are laid down in No.31 J, dated the 12th March 1875 which were framed under the old extradition Act, but which are still in force under section 2 of the present Act. (See page 17 of British enactments in force in Native States.) When Mysore was under the direct administration of the British Government, order No.149J., dated the 8th October 1875 applied, which took away the operation of the Extradition Act and the rules framed under it (See p.19 of the same book and foot-note 1). When Mysore was under the direct administration of the British Government, Magistrates in Mysore could issue warrants directly to the Magistrates in British India for the arrest of offenders from Mysore who had taken refuge in the British territories, as the British Magistrates still do in the case of offenders

offenders from British India who have escaped into this State. As pointed out in Mr.Chandrasekhara Iyer's note, (serial No.7 of file I) two courses are open now to the authorities in British India for the arrest and surrender of criminals found here, who are wanted for offences committed in British India. On the authority of the Chief Commissioner's Notification No.111, dated 13th July 1878, British Magistrates can issue warrants directly to the Magistrates in Mysore for the arrest of offenders. This Notification is included in the schedule attached to the Instrument of Transfer (see p.68 of Macpherson's British enactments in force in Native States). The Resident or other officer authorised by him may demand the surrender of any person accused of having committed an offence in British India, as provided by Art.16 of the Instrument of Transfer. As the former is the more convenient course, the latter is seldom resorted to. The procedure to be adopted in securing the arrest of offenders by Magistrates in British India has been pointed out recently in two Government Proceedings.(see No.1075-84/J.93, dated 19th July 1899, and No.938/J 101, dated 21st July 1900). But in order to obtain the surrender of persons who have offended against the Mysore laws and who are to be found in British territory

(Sl.No.12 in File E.2)
of the printed Proceedings in file J.

we

we have to move through the British Resident, who in the absence of a treaty has to proceed under the Extradition Act. There is, strictly speaking, no reciprocity in the matter . The reason assigned is that the executive Government in British India can only exercise the powers as established by Acts of Parliament and its own laws. Native States are not hampered by any such restrictions (See Lee Warner's Protected Princes of India, pp.355-357.)

But the question directly bearing on the present subject is - what is the procedure to be adopted in cases where a person, who is liable to be arrested without a warrant in British India, is found in the Mysore State. In this case a proclaimed offender from Madras was found trading at Sagar. Could an officer of the British Police arrest him without warrant in Mysore? Apart from general considerations, this case seems to be concluded by Police order No.157 issued for the guidance of Police in the Madras Presidency and printed with Government Proceedings No.6226-35/j.668, dated 1st November 1898. (See sl.No.8 in file E). The last part lays down:-

"At the same time in the case of any grave criminal taking refuge in foreign territory it may frequently be advisable for the Police officer to go to the head of the police of the place where the

fugitive is and state all the circumstances in order that the police of the territory may be warned to keep an eye on the criminal until the proper forms have been complied with." On the strength of the order it has been held that the action of the ~~South~~ North Arcot Police in arresting without a warrant two persons residing at Mulbagal on a charge of kidnapping a girl (an offence for which a person may be arrested without a warrant) was irregular. (see sl. No.7 in fileE, I may be permitted, however, to point out that the portion marked 50(J) in 157 (sl.No.8 in fileE) is inconsistent with the Chief Commissioner's order and existing practice, as it requires the British Magistrates to move in every case through the Political Officer. Another point of difference is that the persons arrested then were presumably Mysore subjects, but in this case the offender is a native Indian subject of His Majesty. When making that reference also, a doubt seems to have been felt whether s.58 of the Criminal Procedure Code taken with ss.4 & 8 of the Foreign Jurisdiction Act did not authorise British Police officers to arrest persons, who have committed cognizable offences ~~from being arrested~~ without warrant even in foreign territory. (see the then Secretary's remark on the note Sl.No.2 file E)

See SC No. 16 of the same file where it has been held that the Station Officer of Kolikunda was wrong in arresting a person within Mysore territory accused of an offence under s. 406 I.P.C.

Sections 4 & 8 of the Foreign Jurisdiction Act and s,54 Cr. Pro.Code taken by themselves and literally interpreted seem no doubt to give British Police officers the power of arresting offenders against British law when they can be arrested without warrant if they are native Indian subjects of His Majesty, even outside British India. The question is whether such power is to be regarded as restricted by section 58 of the Criminal Procedure Code which gives them the power to pursue such persons only in British India and the independent rights of each State. The point is not free from difficulty and does not seem to have been hitherto a subject of legal discussion. It is no doubt irreconcilable with the autonomy of a Native State to allow such a right. But it may be one of the anomalies under which we labour with regard to extradition. A letter may be drafted to the Residency simply stating the facts the action of the Hd Constable and that it is inconsistent with the Police order and that such irregularities may be avoided in future.

Submitted with a draft.

There has been great delay on the part of the Dt Magistrate in referring this.

Rec. from the Secl. 14-5-02 (S.B.)
for perusal. 14.5.02

81/5/02

The question is, Whether the British Police can arrest a native Indian subject of the King in Mysore without a warrant and without the intervention of the local magistracy or Police.

I find that the present Resident, Col Roberton, has in another connection* thrown out the surmise that, under s. 58 of the Code of Criminal Procedure read with s. 8 of the Foreign Jurisdiction Act, a British Police officer may pursue even beyond the limits of British India any person whom he is authorised to arrest, if the offence is a native Indian subject of His Majesty.

* Vide para 3 of his letter dt 19.9.98 & the chief sec's to the Govt of Bombay printed in cl no 8 of E. file no 2 of 1897-98.

I do not think this reasoning is correct; for section 8 of the Foreign Jurisdiction Act has a personal, not a territorial, application: it purports to apply to native Indian British subjects in non-British territory but not to such non-British Indian territory itself, the law of criminal procedure in force in British India. There is a real and important difference involved in the two ideas. In the sense in which I read s. 8 of the Act, the Police of British India are not justified in acting in a way which will confer

was the territorial sovereignty of His Highness the Maharaja in the Mysore State.

The only manner in which the arrest of an offender in Mysore can be processed is either under the Chief Commissioner's Notification no 111 of the 23rd July 1878 or under Art. 16 of the Instrument of Transfer. In the former case, a warrant from a competent magistrate in British India has to be addressed to a magistrate or police officer in Mysore for execution. In the latter case, also, it is for the Mysore Govt to take action upon a demand by the British Resident.

In the present instance, the view taken by the Taluk magistrate and the Sub Division officer of Saga appears to me to be the correct one & not that expressed by the District magistrate.

As the person illegally arrested has been released on bail and some four months have already elapsed, I do not know if it is necessary to address the Resident at all in the matter. An order to the D.C. Magle seems to me enough. If this is approved, I shall prepare & submit a draft.

M. Chandrasekhara
16-5-02

Submitted to the Dewan Sir

607[illegible]

Whereas information
as to what has been
done with regard to
the arrested man -
Mean enquiries as
ascertain. In the
meanwhile there being
[illegible] no necessity for
any action by Govt - the Police
Officer giving who arrested
the man, who
clearly without official
authority - produced
him at once before
a Local Magistrate.
Were he found guilty on
enquiry he is liable to
[illegible] any one.

17.VII.02

Draft

Draft
21/7/02

Sub:- The District Magistrate,

tales that the proclaimed offender,
he has been released on bail pending
e receipt of a warrant, absconded
hen a warrant was received from
e Presidency Magistrate on 1st Feby 1902

and that the said warrant was at the request of the Head Constable of Madras returned to him on the 22nd idem, as the accused was reported to have fled to Honnawar (British Territory). No information has been received by the District Magistrate of the accused's arrest.

Subd for orders.

22-8-07

SR
22/8/07

No further action is necessary. May the papers be filed?

27/8

The Dewan
through the 2nd Councillor.

J 13
AR 27-8-07

There appears to arise a very serious question which cannot be left for all by a reference to the Resident - I agree generally with the view

is uncalled for because the
Gaekwar cannot in 90 cases
out of 100 — can in no case —
that the arrest is unjustifiable
Should the arrest is one of the
— decency & any 9 said cases
in no injustice or hardship

7. IX. 02

6983

Both these
news are
very sound.
But I think
the man should
be taken to
a local magistrate
ment of the wrongful
is mitigated. If the
had not caught him
the man as now would
have disappeared altogether
Under these I think
any representation with
Mr Graham is not
necessary — Ruling

expressed by Mr Chandu-
-lal Lhaga Dyer. I may
note it seems to me
clear that a British
Police officer has no
power to arrest a
man in Mysore —
Whether a native Indian
subject or otherwise —
except thro' the inter-
-vention of the local
Police or Magistracy —
In the present case
the Police officer con-
-cerned exceeded his
powers in taking
action on his own
responsibility —

If however the
Mysore Authorities think
the matter may be
dropped, I am
agreeable to the adoption
of that course — & to the Dewan being informed
that under the
circumstances
of the case Govt
cannot consider
any action on his
part called for —

E.C.

Submitted to the Viceroy

Ryngm
3.9.02
5877

Dewan's Remarks:—

Both these views are very sound
But I think the man having been taken
a local Magistrate much of the irregularity
is mitigated. If he had not caught him
the man as now would have disappeared
altogether. On the whole I think any re
-presentation to the Madras Government
is not very necessary. Ruling is uncalled
for because the question raised is so clea
that there can be no doubt that the ar
-rest is irregular. But the question is o
f expediency and as I said resulted in
no injustice or hardship.

(Initd) P. N. R.
7-9-02

~~Submitted~~ A draft is submitted for approval

I am not quite clear about the lesso
of the reply to be given to the Chaplain, but
have noted down a tentative draft for approva
or correction.

SM
11-9-02

12.9.02

OFFICE OF THE
12741
1579

1901.02

SECTION Pol

FILE No. 16070-KL

SERIAL No. 1

FROM K. B. Chettiar Esqre
District Magistrate
Shemaka

To
H. V. Nanjundayya Esq
Secy to the Govt. of Mysore
Gl & Rev. depts.

Dated 2d
Despatched
Received
} April 1902.

General No. 883
No. 38
Enclosure No. K. Jr.

Request to move the Honorable the British Resident in Mysore to issue instructions to the British Police to make the arrests in the State with the knowledge and help of the Mysore Police.

Inst
4.4.02

Note submd
7.4.02

Shemoga District Magistrate
Camp Sagar, dated 2d.
April 1902.

No. 883/38 En Confdl.

From: K. P. Puttanna Chetty Esquire
District Magistrate
Shemoga.

To, H. V. Nanjundayya Esquire
M. A. M. L.
Secretary to the Govt. of Mysore
General and Revenue departments

Sir,

In forwarding herewith the Vernacular correspondence ending with the Sagar Sub-division Magis. trate's Jadi no. 69, dated 14th March 1902, I have the honour to state that one Abdul Rahim of Vaniam-badi (a native Indian Subject of His Majesty), who was trading in Sagar under the assumed name of Anantapur Ahmed Hussain Sahib was arrested by the Head Constable of the Intelligence Branch of the Madras Police on 23d January 1902 at Sagar and produced before the Amildar and 2d Class Magistrate of Sagar. The Head

Constable made the arrest himself and was not armed with a warrant from a British Magistrate. But he brought letters from the Commissioner of Police and the Chief Inspector of the Madras city Police from which it was made out that the said Abdul Rahim was a proclaimed offender in a criminal case on the file of the Chief Presidency Magistrate, Madras, on charges under sections 419, 420, 467 and 468 & 471 of the Indian Penal Code.

These are on the file.

2. The Head Constable requested the Taluk Magistrate to remand the arrested person to lock-up pending the receipt of a formal warrant from Madras, but the Magistrate doubting the legality of the arrest released the man on bail and recognizance bonds and reported the matter to the Sub Division Magistrate. The latter in forwarding to me the papers connected with this arrest, stated that the arrest made

made by the Head Constable was irregular and illegal as the said Constable was not armed with a warrant as required by Chief Commissioner's Notification no 111 dated 23d July 1878 and also that the arrest should have been made with the knowledge and through the intervention of the local Police as laid down in Madras Police order no 157 published in Mysore Government Proceedings no 6226-35 / J. 668 dated 18th November 1898.

3. The questions for consideration are (1) whether the arrest of the accused by the Head Constable without a warrant was legal and (2) whether the arrest should have been made with the knowledge and help of the Mysore Police.

4. Now, as regards the 1st point, I think that the act of the Head Constable was legal, for section 54 clause (3) of the Criminal Procedure Code authorizes a Police

Police officer to arrest a proclaimed offender without a warrant. The letters of the Commissioner of Police and the Chief Inspector of Madras City Police as well as the deposition on oath made by the said Head Constable before the Taluk Magistrate of Sagar go to show that the accused Ahmed Rahim was proclaimed an offender on the 16th February 190. by the Presidency Magistrate of Madras and that the fact has been duly published. Section 5-8 of the Criminal Procedure Code as it is in force in British India read with section 8 of the Extradition and Foreign Jurisdiction Act empowers the British Police to pursue an offender whom they are authorized to arrest into any place outside British India in the case of all Native Indian subjects of His Majesty and the accused Vaniambadi Abdul Rahim is, as already stated a native Indian subject of His Majesty

the Chief Commissioner's Notification

No.

No. 111 dated 23d July 1878 relied upon by the Sub Division Magistrate applies, I think, only in the case of persons who are subjects of the Empire State, in which case the British Police cannot make the arrest without the necessary warrant from a British Magistrate.

5. In this connection I beg to observe that the Taluk Magistrate would have done well if he had remanded the accused to custody pending the receipt of a formal warrant, even if he considered the arrest made by the Head Constable was irregular.

6. As regards the 2d point I beg to state that though there does not seem to be any Government Proceedings to the effect that all arrests in Mysore by the British Police should be made with the Knowledge and help of the Mysore Police in practice hitherto has been

been to make all such arrears
the knowledge and help of our
Police. Madras Police order as well
as the Chief Commissioner's Notice
tion above quoted seem to requir
such a procedure. This practice
has prevailed from a long time
and seems to be convenient in
every way as it keeps the local
magistracy and Police informed
of all that takes place in their
jurisdiction. If the Government
are also of the same view, I beg
that the Honorable the British
Resident may be kindly moved
to cause necessary instructions
to be issued to the British Police

I have the honour to be,
Sir,
Your most obedient Servant
W. H. Cammegett
District Magistrate
of Shemoga

Secy: Pol

FILE NO. 66 701-02

SERIAL NO. 2

To

The District Magistrate

Shimoga Distt:

No. 1376/122

Date: 23/7/02

His letter No. 883/38 dated 2nd April 1902, reporting the arrest by a Madras Head Constable of a proclaimed offender Abdul Rahim of Vaniambadi at Sagar without a warrant and without the intervention of the local authorities

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Adverting to the above, has the honour to enquire what has been done with regard

regard to the arrested man.

B—O

Demonisation

Jn
Jn Secy
22/7/02

SP
22/7/02

SECTION Pol

FILE NO. 66 907 02

SERIAL NO. 4

1560

5 AUG 1902 9174

1902-03.

FROM L. P. Pattesal Esq.
District Magistrate
Shimoga.

To H. V. Nanjundayya Esq. M.A. M.L.
Secretary to Government
of Mysore
Genl & Rev Depts.

Dated 2d August 1902

Despatched

Received

General No. 135

No. 5

Enclosure No.

With reference to his
No 1376 dated 23d July/02
J 122
States that when a warrant
was sent by the Presidency
Magistrate for the arrest
of Abdul Rahim of -
Vaniambady the latter
absconded to Honnavar.

No.

District Magistrate's Court
Shimoga 2d August 1902

From V. S. Puttamachetty Esqr.
District Magistrate
Shimoga

To H. V. Nanjundayya Esqr. M.A.M.L.
Secretary to Government
General and Revenue Depts.

Sir,

With reference to your docket No. 1376/F 122 dated 23d July 1902 enquiring what has been done with regard to Abdul Rahim of Vaniambadi arrested by a Head Constable of the Madras Police without a warrant and without the intervention of the local authorities, I have the honour to state that the Amildar Magistrate of Sagar reports in his itilla No 92 dated 31st ultimo that the said Abdul Rahim who had been

released on bail pending the
receipt of a warrant, absconded
when a warrant for his arrest
and surrender was received from
the Presidency Magistrate on the
1st February 1902 and that the
warrant was, at the request of
the Head Constable of Madras,
returned to him on 22nd February
1902, as the accused was reported
to have fled to Honnavar and
that no information has been
received about the said Abdul
Rahim having been re-arrested

I have the honour to be
Sir,
Your most obedient Servant

[illegible]
District Magistrate
Shimoga.

POL
FILE No. 660101.02
SERIAL No. 4

Read:-

Letter No: 883/38 dated 2nd April 1902, from the District Magistrate, Shimoga, reporting that one Abdul Rahim of Vaniambady, a native Indian Subject of His Majesty, and a proclaimed offender, was arrested at Sagar on the 23rd January 1902 by the Head Constable of the Intelligence Branch of the Madras Police, without a warrant from a British Magistrate & without the intervention of local authorities and that the accused was immediately produced before the Amildar Magistrate of Sagar, who, however, doubting the legality of the above arrest, released the accused on bail

the Sub Divn Magistrate for orders, ~~and stating that in his finding the arrest made by the British P. Constable was illegal~~

2. Letter No. 135/5 dated the 2nd August 1902, from the Same Officer, reporting with reference to Govt. Docket No. 1376/J122 dated 23rd July 1902, that the proclaimed offender who was released on bail, absconded when a warrant for his arrest was subsequently received from the Presidency Magistrate, Madras and that his whereabouts are not known.

Order thereon. 4336 G.R. Papers. J 367 20/11/02

It is very clear that a British Police officer has no power to arrest a man in Mysore — whether a native

Received with thanks. Govt. do. not consider do. advisable to prosecute in this case.

11/12/02

Indian Subject or otherwise — except through the interven-tion of the local Police or Magistracy. In the present case the Police officer concerned no doubt exceeded his power in taking action on his own responsibility; but as the accused had been taken forthwith to the local Magistrate, much of the irregularity is however mitigated.

As there has already been a delay of 8 months and as there has not been any hardship or injustice resulting to any one, Govt. do not consider any representa-tion to the Madras Govt. very necessary at present.

To the Dist. Magte, Shimoga, returning the ver: papers rec'd with the 1st of the letters read above.

Secy